

L9FGschC

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

17 Cr. 548 (PAC)

5 JOSHUA ADAM SCHULTE,

6 Conference

7 Defendant.

-----x

8 New York, N.Y.
9 September 15, 2021
10 4:00 p.m.

11 Before:

12 HON. PAUL A. CROTTY,

13 District Judge

14 APPEARANCES

15 AUDREY STRAUSS

16 United States Attorney for the
17 Southern District of New York

MICHAEL LOCKARD

DAVID DENTON

18 Assistant United States Attorney

19 JOSHUA ADAM SCHULTE, Pro Se

20 SABRINA P. SHROFF

DEBORAH AUSTERN COLSON

21 Attorneys for Defendant

22 Also Present:

23 DAN HARTENSTINE, CISO Officer

L9FGschC

(In open court)

THE DEPUTY CLERK: Your Honor in the matter of 17 Cr.
54, United States of America v. Joshua Adam Schulte.

Counsel for the government, please state your
appearance.

MR. LOCKARD: Good afternoon, your Honor. Michael
Lockard and David Denton for the government.

THE COURT: Good afternoon.

MR. DENTON: Good afternoon, your Honor.

MR. SCHULTE: Josh Schulte here, pro se. Good
afternoon.

MS. SHROFF: Good afternoon, your Honor. Sabrina
Shroff and Deborah Colson for Mr. Schulte, who is seated to my
left and Ms. Colson's right.

THE COURT: Does the government want to bring up
anything?

MR. LOCKARD: Your Honor, the only item that the
government had raised for the Court's attention is the question
of the defendant's delivery of correspondence to the
government, which is addressed in our September 3rd letter.
I'm happy to discuss it with the Court.

THE COURT: Yes, please.

MR. LOCKARD: So your Honor, this is, in some ways, a
relatively simple issue, but at the same time also does involve
some important considerations, given that it involves

L9FGschC

1 communications and correspondence by an inmate who is subject
2 to SAMs because of his unlawful disclosure of classified
3 information.

4 The background of the problem, as the Court knows, is
5 that the defendant is under SAMs and is now also pro se. So he
6 no longer has the assistance of counsel to communicate on his
7 behalf with the government. And the SAMs mean that his
8 communications from the prison are subject to monitoring and
9 restrictions under the special administrative measures. And so
10 the question has arisen, how does the defendant write to the
11 government.

12 Now, of course, the defendant can use the mail, which
13 he has access to. He can mail things through the postal
14 service. Because of the review and procedures involved with
15 his prison mail, that can be delayed, which we recognize. And
16 so we have proposed a number of alternatives to the defendant
17 and to standby counsel for him to convey correspondence to the
18 government, which we think are secure, reliable and also
19 minimally burdensome to everybody involved. Standby counsel
20 has rejected that proposal, and that's outlined in their
21 September 10th letter. There's not really any explanation for
22 why those proposals have been rejected. But I'm happy to
23 outline them again for the Court and the reason why the
24 proposals we think are appropriate.

25 THE COURT: Would you do that, please.

L9FGschC

1 MR. LOCKARD: Yes, your Honor.

2 So number one, if the defendant has correspondence for
3 the government, standby counsel can scan it and email it to us.
4 Standby counsel or a cleared paralegal is physically with the
5 defendant twice a week during his SCIF visits. Standby counsel
6 has been filing scanned written letters and motions by ECF. I
7 think they have filed about ten or eleven letters and motions
8 on his behalf, so it's something that's happening anyway. And
9 we think that that is a safe and minimally burdensome
10 alternative to the US mail. Or correspondence can be delivered
11 to the US attorney's offices. One St. Andrew's is staffed
12 24/7, and it is always open to receive mail. We also have an
13 office in the courthouse on the fifth floor, which we do not
14 typically use for the receipt of mail, but given these
15 particular circumstances, we agree that that's a place where
16 mail can be delivered, as long as it is staffed. Typically, an
17 administrative personnel or a security officer will be at the
18 desk and can hold onto correspondence so that we can come get
19 it. Or fourth, if standby counsel or the defendant has
20 physical custody of correspondence, they can let us know, and
21 if somebody is available, we will send someone to come pick it
22 up in person.

23 What we think is not appropriate is for the hallway
24 outside the courthouse SCIF to essentially be used as a mail
25 drop. That area is not under US attorney's office control. It

L9FGschC

1 is not secure. It is accessible by noncleared personnel. It
2 is accessible by members of the general public at times.
3 Prospective jurors, at times, have access to that floor. We
4 don't think it's appropriate to have documents or
5 correspondence left there, especially under these circumstances
6 and given the issues in this case.

7 THE COURT: So you have proposed several alternatives?

8 MR. LOCKARD: Yes, your Honor.

9 THE COURT: And Mr. Schulte and his team have declined
10 to accept any of them; is that correct?

11 MR. LOCKARD: The counterproposal has been to use the
12 hallway as a mail drop area.

13 THE COURT: Mr. Schulte?

14 MS. SHROFF: In fairness to Mr. Schulte, that issue is
15 standby counsel's issue.

16 THE COURT: Ms. Shroff, go ahead, then.

17 MS. SHROFF: Thank you, your Honor. I just want to
18 make sure that we're all on the same page as to what we're
19 talking about, right. We are not talking about anything that
20 has come out of the SCIF or has gone into the SCIF. Once a
21 document -- as the government well knows and has conflated this
22 issue here -- once a document enters the SCIF, according to the
23 court information security officer, that document becomes
24 presumptively classified.

25 To make sure a simple letter to the government about

L9FGschC

1 nonclassified matters is delivered to the government without
2 making it presumptively classified, the only way for
3 Mr. Schulte to do that is to make sure that that letter does
4 not enter the SCIF.

5 So throughout this case, there has been a chair
6 outside the SCIF -- and I'm not sure if the Court has seen
7 where the SCIF is located -- it is not located where the jurors
8 come in. It is guarded by an anteroom that has an FBI agent
9 and a very, very nice United States marshal service marshal
10 named Gary who sits in the anteroom. It is opposite that
11 entrance room that is the chair on which there is a big plastic
12 bin. In that plastic bin over the course of this case, we
13 leave our cell phones there because they cannot enter the SCIF,
14 we leave our documents that we don't want to have become
15 presumptively classified outside, we leave our bags outside, we
16 leave most of our possessions outside, including, sometimes,
17 our shoes and, most importantly, our cell phones. So sometimes
18 you will see outside of that SCIF door, there will be two
19 phones belonging to Ms. Colson, two phones belonging to me, two
20 phones belonging to Asha. That's six phones outside. That
21 area is actually monitored by the court security staff, because
22 sometimes the court security staff leaves us little notes that
23 say, don't forget your phone. It's definitely monitored.

24 The proposal to the government was this, Mr. Schulte,
25 before he enters the SCIF, will drop off that letter in that

L9FGschC

1 box so that he doesn't bring the letter into the SCIF. And
2 nothing in that box will ever receive any piece of paper that
3 Mr. Schulte has created within the SCIF. Anything created
4 within the SCIF or brought into the SCIF, standby counsel will
5 deal with.

6 What we don't want to do is become fact witnesses
7 between the government and Mr. Schulte. We do not want to
8 coordinate between the government and Mr. Schulte. So we had a
9 proposal for the government. The government and Mr. Schulte
10 should have a phone call; a phone call every month, every two
11 weeks, every week, that's up to the two of them. The call will
12 be placed by the person who is within the SCIF, and then
13 Mr. Schulte and the government can speak at a set time so that
14 the government's insistence that Mr. Schulte make arrangements
15 with them so they can then go get an FBI agent to listen to the
16 call, all of that is pre-planned and it's a set meeting so we
17 don't have to waste time and energy.

18 When Mr. Schulte has any correspondence for the
19 government, we have specifically told them that he will let
20 them know. But the government refuses to pick up a call from
21 Mr. Schulte unless we give them advanced notice of the call.
22 So my suggestion was, just have a weekly call, then the problem
23 is solved. I put that in my letter to the Court. You have a
24 weekly call. Mr. Schulte will let Mr. Lockard know there's
25 mail. Mr. Lockard's staff, who goes to that building ten times

L9FGschC

1 a day, if not more, can simply stop on the ninth floor, pick up
2 the mail and leave.

3 In the alternative, we will drop it off on the fifth
4 floor. But we will not be responsible for calling Mr. Lockard
5 and telling Mr. Lockard to go to the fifth floor to pick up the
6 mail, because that's a --

7 THE COURT: You will do that for the ninth floor but
8 not the fifth floor?

9 MS. SHROFF: Well, I said, we will go from the ninth
10 floor to the fifth floor. I don't know why they can't go from
11 the fifth floor to the ninth. If it's not burdensome for me,
12 it's not burdensome for them.

13 Let me just say one more thing, your Honor. We're not
14 in the SCIF every time Mr. Schulte is in the SCIF. It's
15 extremely tough for us. We are rotating our schedules some
16 days. So some days Ms. Colson covers from 10:00 to 12:00. I
17 cover from 12:00 to 2:00, Asha steps in from 2:00 to 2:30. Our
18 schedules are not such that we can block off chunks of days and
19 just sit in the SCIF. It's impossible for us.

20 THE COURT: Mr. Lockard, what do you have to say?

21 MS. SHROFF: One last thing, your Honor. We went and
22 hired a contract paralegal. We haven't even asked the Court to
23 give us the money nunc pro tunc, to be honest with you, we have
24 been so stressed out trying to get coverage in the SCIF,
25 because that is also another problem, the days keep moving, the

L9FGschC

1 jury selection days keep changing. So we hired this gentleman
2 who works for another company. He does not have an office. He
3 does not have email access for us. He's not able to go use his
4 office's services to scan and email to Mr. Lockard.

5 So this has never been an issue with Mr. Kamaraju and
6 Mr. Laroche. We did this all the time. Somebody came, knocked
7 on the SCIF door, we had a conversation, we gave them stuff.
8 Or we met in the middle of the street between here and One
9 St. Andrew's. To the extent we are there, we can do this. But
10 if the contract paralegal is there, he doesn't have a way to do
11 that. And the best he can do is to tell Mr. Lockard to send
12 somebody from his staff from the fifth floor to the ninth floor
13 to pick it up. And if Mr. Hartenstine would give us
14 permission --

15 THE COURT: Thank you.

16 MS. SHROFF: Thank you.

17 THE COURT: Mr. Lockard?

18 MR. LOCKARD: Yes, your Honor. Very briefly, the
19 problem that Ms. Shroff has identified, this issue with
20 documents becoming presumptively classified is actually not a
21 problem. That is not true. Documents do not become
22 presumptively classified because they have been taken into a
23 SCIF.

24 Mr. Hartenstine can discuss SCIF security issues with
25 the Court, he's here. But our understanding is that to

L9FGschC

1 preserve and protect the integrity of the data in the SCIF, the
2 court information security officer doesn't want the defendant
3 to bring material from outside in because then it's hard to
4 tell if the same documents are coming out or if material from
5 inside the SCIF is coming out. That's really the question.

6 MS. SHROFF: Then wouldn't it make sense for him to
7 leave the document outside and not take it in? Mr. Hartenstine
8 is the one who told me that if you take a document inside the
9 SCIF, it becomes presumptively classified --

10 THE COURT: Ms. Shroff, let's proceed in an orderly
11 fashion. I'm listening to Mr. Lockard now. You will have the
12 opportunity to respond.

13 MS. SHROFF: I thought he was done, I'm sorry.

14 THE COURT: He was in mid sentence.

15 MR. LOCKARD: Thank you, your Honor.

16 So that is not a problem. It is not a problem for the
17 defendant to have correspondence taken with him into the SCIF
18 and then have us come get it or have standby counsel deliver it
19 in one of the, as I have said, minimally burdensome ways that
20 we have identified.

21 Number two, the idea that we're only talking about
22 nonclassified materials, that's based entirely on whatever
23 self-classification decisions the defendant makes, which we
24 don't think is an effective or reliable or secure way to handle
25 documents. The defendant has access to classified information

L9FGschC

1 in the SCIF. He has access to classified information in his
2 head and can include classified information in a letter that he
3 leaves in the hallway.

4 And then this is, I think, sort of not even really
5 relevant to the issue, but Ms. Shroff's reference to past
6 practice is talking about in-person delivery from the US
7 attorney's office to defense counsel and vice versa, which is
8 one of the methods that we have proposed. We will, if someone
9 is available, send somebody to collect it in person. But we
10 think that there are security and reliability problems with
11 leaving documents or correspondence unattended in a courthouse
12 hallway.

13 THE COURT: Ms. Shroff?

14 MS. SHROFF: Your Honor, we did not have hand-to-hand
15 exchanges with past team members. We left the documents in
16 that bin for a note for Mr. Kamaraju. Mr. Kamaraju may have
17 knocked and had talked to us or vice versa, but we had none of
18 these issues with the prior team, that's one.

19 Number two, I sent my September 10th letter, which
20 discusses how a document comes to be presumptively classified
21 to Mr. Hartenstine, and I didn't hear any objection from
22 Mr. Hartenstine describing it that way, and I believe I got
23 that information from him.

24 But we don't police what Mr. Schulte writes or doesn't
25 write. We've had several conversations with the CISO about

L9FGschC

1 this. We have no way of knowing what Mr. Schulte -- we are not
2 the police of Mr. Schulte in the SCIF. That's our point to
3 both the CISO and the government. We do not watch what he's
4 doing. We're not there as the police. If Mr. Schulte writes a
5 letter, we don't necessarily have any ability --

6 THE COURT: Well, I haven't seen the September 10th
7 letter. What I'm going to propose now is --

8 MS. SHROFF: Your Honor, I think it was ECF filed with
9 the Court.

10 THE COURT: It may have very well been. I haven't
11 seen the letter, though. That's a point of fact. What I'm
12 going to ask you to do, both sides, is submit what your best
13 proposal is and I will determine which proposal I'm going to
14 adopt and it will be binding on both sides, whatever I adopt.
15 So today is the 15th, you are to submit the document by the
16 22nd, a week's time for you to prepare the letter, and I will
17 rule on it promptly. We will resolve this issue.

18 MS. SHROFF: Your Honor, I will be out of the country
19 on the 22nd, but I'm sure somebody else can finish and put the
20 letter in.

21 THE COURT: Mr. Lockard, do you have anything else you
22 want to raise?

23 MR. LOCKARD: No, your Honor, not for the government.

24 THE COURT: Mr. Schulte?

25 MR. SCHULTE: Yes, I had several issues I wanted to

L9FGschC

1 discuss.

2 THE COURT: All right.

3 MR. SCHULTE: The first one is, in one of the motions
4 for production of discovery, the home server and home desktop,
5 the government responded -- and I have replies that I don't
6 think have been filed yet -- but it's an issue that I think
7 needs to be addressed right away. Essentially, the government
8 is saying these two servers have already been produced and are
9 in the SCIF. And my standby counsel has always said that's not
10 the case. And on September 10th, I told them the government's
11 response. They did a look of the SCIF. She's right here, she
12 can tell you. Neither of those computers are in the SCIF, they
13 haven't been, I have never reviewed them in the five years the
14 government has had them. So I mean, we can go back and forth
15 and say --

16 THE COURT: Mr. Schulte, have you replied? You say
17 you have made a motion for this, the government has responded;
18 have you replied?

19 MS. SHROFF: Your Honor, maybe I can shortcut this for
20 a second. As I understand it, there were some computers that
21 were in the SCIF and then the cabinet -- I don't know what the
22 word is -- maybe it broke or had to be reconfigured or
23 something. So I think those computers are now somewhere in the
24 CISO's possession. Is that correct?

25 MR. HARTENSTINE: Your Honor, so this incident

L9FGschC

1 occurred immediately before the first trial, in which one of
2 the cabinets, the safe within the SCIF that was used to house
3 the computer with the alleged child pornography on it was
4 stored in this safe. And the FBI had the combination to the
5 safe. And the FBI had the combination to the safe. The
6 arrangement was that if the defense needed access, they would
7 contact the FBI and request that the FBI come and open the safe
8 and give them access, because my understanding is that that's
9 policy with regard to custody of child pornography.

10 When this lock was attempted to or someone attempted
11 to open the lock, it malfunctioned -- it hasn't been used in a
12 while -- which is a common problem with those. And since we
13 were quickly approaching trial, I took custody of the hard
14 drive, and it remains in my custody now. It's in the Court's
15 SCIF in a drawer designated for use by the CISOs.

16 MS. SHROFF: So we can solve this problem by getting
17 the computers from whichever SCIF it is in and getting them to
18 the SCIF that Mr. Schulte uses. Of course, Mr. Schulte has no
19 way to watch that data without the presence of the FBI, so I
20 think the government is going to have to make some
21 arrangements.

22 And we would ask, your Honor, that whoever is entering
23 a closed room with either Ms. Colson and I be vaccinated. It
24 is my understanding that not everybody on the government's
25 prosecution team is vaccinated. And we would very much

L9FGschC

1 appreciate it if people who are actually vaccinated worked with
2 us in close proximity.

3 MR. SCHULTE: Just to be clear, that was only the one
4 computer. The server 02 or a different server, that was never
5 there, right, that was something else?

6 MR. HARTENSTINE: That's correct.

7 MR. SCHULTE: So that was never there and it's not in
8 the SCIF currently, server 02, so there's the issue of this
9 server as well. That's also not at the SCIF, standby counsel
10 has confirmed that.

11 THE COURT: This computer is in the SCIF related to
12 child pornography charges?

13 MR. SCHULTE: No, no. Basically, the government is
14 alleging that this server has the Snowden documents on it that
15 were released publicly. And because this public website was
16 viewed, therefore the whole server was classified, and now it
17 can't be produced to me in unclassified discovery. However,
18 it's never been produced in the SCIF. My standby counsel
19 cannot find it.

20 THE COURT: The state of the record, Mr. Schulte, is
21 you moved for release of this information, the government has
22 responded, and you have yet to reply or you don't need to
23 reply? Do you want to reply?

24 MR. SCHULTE: I asked the Court for October 1st to
25 reply because they had an omnibus response. And so I asked the

L9FGschC

1 Court until October 1st to file replies to all of them. I gave
2 six replies to --

3 THE COURT: Is October the 1st enough? Because I'm
4 more than happy to give you October the 1st for your reply.

5 MR. SCHULTE: Yeah, I think I gave standby counsel
6 like four or five of them yesterday, so they were unable to
7 file them yet. But most of them should be filed by next week.

8 I just wanted to bring this to the attention of the
9 Court, knowing that, yes, there's a reply, I have a declaration
10 in there about this. But with trial approaching, I just wanted
11 to make sure that the Court knows that this discovery has never
12 been reviewed at all by me in five years. And I was hoping
13 that there could be a quicker response either from the
14 government or something to resolve this now, rather than
15 waiting for the motion practice. Because the government said
16 in their response, basically, that it's not true, that these
17 servers are there. But they didn't reach out to me or try and
18 actually resolve the issue, they just said, it's not true.
19 Like I said, my standby counsel checked and none of these
20 computers are in the SCIF.

21 MS. SHROFF: Your Honor, what Mr. Schulte is saying,
22 as far as I know, is correct. Which is why on Docket No. 502
23 of the Court's docket, I suggested that the government and
24 Mr. Schulte have at least a weekly call so that they can
25 meet-and-confer about discovery-related issues, resolve them,

L9FGschC

1 rather than all of us having to bother the Court. This was the
2 whole point of my telling the government, I gave them literally
3 12 step-by-step things that if they agree to do with a pro se
4 defendant, things would go smoother. And the first one on that
5 is that the government and Mr. Schulte have a weekly or a
6 bimonthly call so that they can discuss discovery-related
7 issues and resolve them within themselves.

8 THE COURT: What's next, Mr. Schulte?

9 MR. SCHULTE: The next issue I was hoping that we
10 could resolve, the other SCIF issue. Now, I think it's been
11 brought up to the Court, just about the fact that during the
12 SCIF time, I am chained to the floor. That makes it unable for
13 me to review, for example, one of the desktop computers that's
14 set up there with a specific forensic environment that was set
15 up by our expert or the ability to take items from the filing
16 cabinets and stuff like this. And during my, whatever, three
17 years or however long it's been with the SCIF, I have had no
18 problems with the marshals or anything. And I'm leg cuffed
19 anyways, just like I am now. So I was just hoping that I could
20 just not be chained to the floor to have some free movement
21 around in the SCIF to be able to do things. And the government
22 responded basically saying, it's a security issue. But like I
23 said, I think it's more secure in the SCIF than it is here
24 even.

25 THE COURT: What is the security issue, Mr. Lockard?

L9FGschC

1 MR. LOCKARD: Your Honor, this is an issue that I
2 believe is also addressed in the supplemental protective order
3 that the Court issued on consent of the parties back in
4 December of 2018. And this particular restraint issue, it's
5 our understanding, was actually at the request of the marshals.
6 The security concern is a concern that the marshals have also
7 expressed to us. And it is their security assessment that,
8 while the defendant's hands are unrestrained while he's in the
9 SCIF -- which is actually a departure from the ordinary
10 security protocols that they follow -- when he's in the
11 presence of non-marshals or non-law enforcement personnel, he
12 should be leg chained and secured to the floor. And that's the
13 response that we got from the marshals when we raised this with
14 them.

15 THE COURT: We'll check to see whether that's still
16 the marshals' position.

17 MR. LOCKARD: Thank you, your Honor.

18 MS. SHROFF: Your Honor, I just wanted to be clear.
19 Mr. Schulte is not asking for the leg chains to come off.

20 THE COURT: He's asking for further lengths of the
21 chain.

22 MS. SHROFF: No, they chain him at the ankles, so he
23 remains chained at the ankles. And then they take the middle
24 part of that chain and nail it to the ground.

25 THE COURT: He wants more chain links?

L9FGschC

1 MS. SHROFF: He just wants to not be nailed to the
2 ground. He doesn't mind his feet being chained to each other.
3 He's okay -- he's not okay -- but he understands that --

4 THE COURT: Another alternative would be to put more
5 links in the chain; correct?

6 MS. SHROFF: No, but he would still be chained to the
7 ground. Unless the more links would be to the chain to the
8 ground. Yes, that would work.

9 MR. SCHULTE: So my understanding is the issue that
10 the marshals have is that they're afraid for Sabrina Shroff in
11 there being attacked by me; is that what the marshals' concern
12 is?

13 THE COURT: I don't know what the marshals' concern
14 is. We'll find out.

15 MR. SCHULTE: Okay. Go ahead.

16 The next issue I wanted to bring up is I'm hoping
17 that -- so there's two more issues I want to bring up. So for
18 example, if I need resources from the Court for something to be
19 purchased -- so for example, the government has said that they
20 consent to this, the laptop they provided me doesn't have a CD,
21 DVD drive -- these things are like \$10 -- the external DVD so I
22 can review these discovery disks. And the government says they
23 consent to that, if it's purchased, that's fine, then they can
24 provide it to me. For things like this, do I need to request
25 this through the Court or what's the process for that? And

L9FGschC

1 will the Court approve that?

2 THE COURT: I suggest you talk to your standby counsel
3 who is fully aware of how you get funding for necessary
4 supplies.

5 MS. SHROFF: Your Honor, we're happy to. We have been
6 dealing with the supply issue. We've gotten him toner, paper,
7 whatever it is that he needs for the SCIF.

8 MR. SCHULTE: So I should talk to them and they're
9 able to purchase this?

10 THE COURT: Right.

11 MR. SCHULTE: On the same issue, I wanted to know what
12 the Court's process is -- and this may be the same answer,
13 then -- for filing if I have classified filings and ex parte
14 filings for the Court, I guess I just work through them?

15 THE COURT: That's what standby counsel is there for.

16 MS. SHROFF: Your Honor, we would like to be heard on
17 the filing of classified information if we could.

18 THE COURT: All right.

19 MS. SHROFF: We did have an issue come up. We filed
20 in excess of caution that the government might take the
21 position that some information was classified, we notified the
22 CISO, we checked, and then we filed the document in a redacted
23 format. We informed the CISO that we disagreed with the
24 classification position taken by the CIA. We told the CISO to
25 get us an answer within 14 days, which is the time frame the

L9FGschC

1 Court had set before. Fourteen days have come and gone. We've
2 gotten no response. So there is a built in delay at each turn,
3 and the delay is what is causing a problem.

4 THE COURT: We'll get you a response.

5 MS. SHROFF: Thank you.

6 THE COURT: Mr. Schulte?

7 MR. SCHULTE: I think I only have two things left.
8 One of the last things is I wanted to bring up to the Court
9 that some of the motions that I'm filing, the government is --
10 in accordance with the local criminal rule 49.1(b) they are
11 supposed to only have 14 days to either respond or to ask the
12 Court for more time. And on the motions so far, the government
13 has just been ignoring the deadline.

14 The most recent motions, the bail motion and cell
15 phone suppression, I think -- according to my standby
16 counsel -- they haven't responded. I think the deadline has
17 already expired. So I just wanted to bring this up and ask the
18 Court to remind the government that this is the local rules for
19 this district and just to make sure that they are abiding by
20 this.

21 THE COURT: Mr. Lockard?

22 MR. LOCKARD: Your Honor, as the Court knows, the
23 defendant has filed a number of motions, not according to any
24 particular schedule, spread out over an extended period of
25 time.

L9FGschC

1 THE COURT: Spread out over 65 days.

2 MR. LOCKARD: Yes, your Honor, at least. And we have
3 filed a non-notice response to at least six or seven of those
4 motions. Anything that was filed since that time, we'll
5 respond to. And we can respond to it any time the Court would
6 like to set. We do think it would be appropriate at some point
7 to talk about a motions deadline. But I think just for today's
8 purposes, we will commit to responding to any outstanding
9 motions in a reasonable timeline, including any deadline the
10 Court would like to set.

11 THE COURT: How about the deadline set forth in the
12 local rules?

13 MR. LOCKARD: Yes, your Honor.

14 MR. SCHULTE: And then the very last thing I just
15 wanted to bring up is the Court issued an order for the MCC to
16 have VTC calls with my family at the 1st of each month. And
17 that's been happening all the way until this month. I was
18 scheduled for September 3rd, and they didn't do anything. And
19 then I was informed, oh, that the MCC decided all of a sudden
20 that they're going to offer family visits now and so they don't
21 have to abide by the Court's order anymore. I don't think
22 that's the way it works. So I just wanted to bring this up.
23 And I think that they should at least -- I mean, my VTC was
24 scheduled for September 3rd and just they decide that day not
25 to do it, so I just wanted to ask the Court to --

L9FGschC

1 THE COURT: Why don't you write a letter bringing that
2 to my attention?

3 MR. SCHULTE: Okay, you want me to write you a letter.
4 I can do that.

5 Standby counsel has told me they called MCC with no
6 response.

7 THE COURT: Mr. Schulte, where are you housed now?

8 MR. SCHULTE: Actually, that's a good question. I
9 actually have something else to write on that. I'm still at
10 MCC. But actually, they have informed me that in the middle of
11 October or middle to end of October -- so basically when this
12 trial is supposed to begin -- the prison is shutting down and
13 they're supposed to be moving us. And they say they'll come
14 and take all of our property, including my legal work and
15 laptops, up to two weeks before they move us. And once we're
16 moved, it will take up to two weeks before we receive any
17 property. So we're looking at a month delay, potentially,
18 where I'm unable to do anything, have no discovery or anything,
19 while they move me from the MCC when it's closed. So this
20 could be an issue.

21 THE COURT: It could be an issue. Mr. Lockard, I hope
22 it's not an issue.

23 MR. LOCKARD: Your Honor, we will reconfirm with the
24 BOP. But we were advised -- I think our office was advised
25 this week -- that Mr. Schulte will not be moved from the MCC

L9FGschC

1 and that a portion of the MCC will remain open for, among other
2 things, in custody defendants and witnesses and Mr. Schulte.
3 So it's our expectation he will not be moved.

4 THE COURT: Are you finished, Mr. Schulte?

5 MR. SCHULTE: Yes.

6 THE COURT: I have some questions for the parties.

7 First of all, Mr. Schulte, are you still requesting an
8 adjournment?

9 MR. SCHULTE: Yes, especially in light of the issue
10 that we just discussed about I haven't been able to review
11 these computers at all. And then I also filed yesterday a
12 notification to the Court of a *Brady* violation -- I have a copy
13 here for the Court, if it wants to see it -- and requesting the
14 information that was withheld during the first trial in
15 violation of *Brady*. And then reminding the Court the
16 significance of the outstanding motion for forensic crime
17 scene, as alleged by the government, the CIA workstation, EX6I
18 server that were the government's case in chief at trial. And
19 so I don't know if it was actually filed yesterday. They said
20 no, they'll file it today, I guess they said.

21 THE COURT: To respond to my question, you are still
22 requesting an adjournment?

23 MR. SCHULTE: That's correct, yes.

24 THE COURT: What about the government?

25 MR. LOCKARD: Your Honor, at this time, the government

L9FGschC

1 does not oppose the defendant's request for an adjournment.

2 And we expect to provide the Court with additional information
3 on that position in the near future.

4 THE COURT: Do you have a date in mind, Mr. Schulte?

5 MR. SCHULTE: Well, Judge, the servers -- it depends
6 on the outcome of some of these motions. So for example, the
7 unclassified server, if the government's position is going to
8 be that because of the Snowden documents, I have to review it
9 in the SCIF, either I'm going to have to add more SCIF days to
10 review unclassified discovery, or it's going to take a lot
11 longer before I can get to trial. And the outstanding motion
12 for the forensics as well. So due to this, there's no real
13 timeframe that I have until some of these issues are resolved.

14 THE COURT: Now, under my tabulation, I tabulate --
15 subject to the government's correction -- the government has
16 filed opposition to seven outstanding motions; is that correct?

17 MR. LOCKARD: Yes, your Honor.

18 THE COURT: And you, Mr. Schulte, have requested until
19 October 1 to reply?

20 MR. SCHULTE: That is correct. But I expect --

21 THE COURT: Just a minute, I'm more than happy to give
22 you the time.

23 MR. SCHULTE: I'm sorry.

24 THE COURT: I'm more than happy to give you the time.

25 MR. SCHULTE: Okay.

L9FGschC

1 THE COURT: Is that all the time you need? Do you
2 want more time?

3 MR. SCHULTE: I'm sorry, how much time?

4 THE COURT: How much time beyond October 1?

5 MR. SCHULTE: I was just about to say, I finished most
6 of them. My standby counsel has most of them. And by next
7 week, it should be finished. I shouldn't need any more time
8 than October 1st.

9 MS. SHROFF: I just need one moment with Mr. Schulte.
10 I think he's forgotten one thing.

11 THE COURT: Okay.

12 (Conferring)

13 MR. SCHULTE: Standby counsel wanted me to remind the
14 Court, in addition to the seven responses that the government
15 filed in this omnibus response, my counselor had previously
16 filed motions that have been pending before I began
17 representing myself. And those motions are still pending. So
18 there's essentially two sets of motions; the motions that were
19 filed before I was pro se that are still pending, and then the
20 motions that were filed since I've been pro se, which the
21 government has responded to, and I should reply by next week.

22 THE COURT: Could you give us a list of those motions,
23 Ms. Shroff?

24 MS. SHROFF: I did, your Honor. I'm happy to resubmit
25 them to chambers, if you'd like.

L9FGschC

1 THE COURT: No. If you submitted them, we'll find
2 them.

3 MS. SHROFF: Thank you.

4 THE COURT: We'll start to work on the motions and the
5 replies on the motions made, as soon as we receive the replies.
6 We'll tend to those promptly. And I expect from each side by
7 the 22nd a proposal on dealing with communications, phone
8 calls, document deliveries, document access and so forth. I'll
9 get the proposal from each side, and I'll rule.

10 MS. SHROFF: Your Honor, could I, with the Court's
11 permission, just resubmit the proposal of September 10th which
12 is Docket No. 502?

13 THE COURT: You don't have to do that. It's probably
14 upstairs.

15 MS. SHROFF: Thank you.

16 THE COURT: I just haven't seen it.

17 MS. SHROFF: That's okay, your Honor. Sorry about
18 that.

19 THE COURT: Is there anything else to take up?

20 MR. SCHULTE: No, not from me.

21 THE COURT: Mr. Lockard?

22 MR. LOCKARD: No. Thank you, your Honor.

23 THE COURT: The matter is adjourned then. Thank you.

24 (Adjourned)
25